

FEB 20 2002  
GATES & COOPER

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SMALL BUSINESS

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 C.F.R. 1.9(f) AND 1.27(c)) – SMALL BUSINESS CONCERN

I hereby declare that I am:

- an official of the small business concern empowered to act on behalf of the concern identified below.

NAME OF CONCERN: Agility Communications, Inc.  
ADDRESS OF CONCERN: 600 Pine Avenue, Suite A  
Goleta, CA 93117

COPY OF PAPERS  
ORIGINALLY FILED

I hereby declare that the above-identified small business concern qualifies as a small business as defined in 13 C.F.R. 121.801-805, and reproduced in 37 C.F.R. 1.9(d) for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled: OPEN LOOP CONTROL OF SGDBR LASERS by inventor(s) Paul F. Crowder described in:

- non-provisional patent application Serial No. 09/895,848, filed June 29, 2001.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37b C.F.R. 1.9(c) or by any concern which would not qualify as a small business concern under 37 C.F.R. 1.9(d) or a nonprofit organization under 37 C.F.R. 1.9(e). \*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 C.F.R. 1.27)

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

INDIVIDUAL       SMALL BUSINESS       NONPROFIT ORGANIZATION

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

INDIVIDUAL       SMALL BUSINESS       NONPROFIT ORGANIZATION

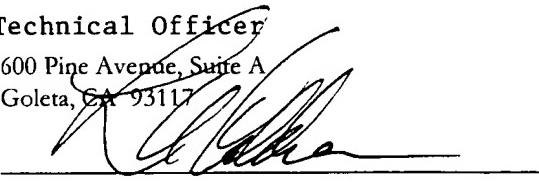
I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as small entity is no longer appropriate. (37 C.F.R. 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereof, or any patent to which this verified statement is directed.

NAME: Larry A. Coldren

TITLE: Chief Technical Officer

ADDRESS: 600 Pine Avenue, Suite A  
Goleta, CA 93117

SIGNATURE: 

DATE: 12/6/01



GATES & COOPER LLP

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

OPEN LOOP CONTROL OF SGDBR LASERS

COPY OF PAPERS  
ORIGINALLY FILED

The specification of which:

a.  is attached hereto

b.  was filed on June 29, 2001 as United States Application Number or PCT International Application Number 09/895,848 and was amended on (if applicable), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT application having a filing date before that of the application on the basis of which priority is claimed:

- a.  no such applications have been filed.  
b.  such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
OTHER FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s), or 365(c) of any PCT international application(s) designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. PARENT APPLICATION OR PCT PARENT NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
09/848,791	04 MAY 01	Pending
09/872,438	01 JUNE 01	Pending
09/879,821	11 JUNE 01	Pending
09/895,303	29 JUNE 01	Pending
09/895,598	29 JUNE 01	Pending

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)
60/215,739	29 JUN 00
60/215,170	29 JUN 00
60/215,742	29 JUN 00
60/203,052	04 MAY 00
60/209,068	02 JUN 00
60/210,612	09 JUN 00

I hereby appoint the following attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

George H. Gates	Registration No. 33,500
Victor G. Cooper	Registration No. 39,641
Karen S. Canady	Registration No. 39,927
William J. Wood	Registration No. 42,236
Jason S. Feldmar	Registration No. 39,187
Bradley K. Lortz	Registration No. 45,472

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Gates & Cooper LLP to the contrary.

Please direct all correspondence in this case to the firm of Gates & Cooper LLP at the address indicated below:

**CUSTOMER NUMBER 22462**  
Gates & Cooper LLP  
Howard Hughes Center  
6701 Center Drive West, Suite 1050  
Los Angeles, CA 90045  
(310) 641-8797

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(1)	<b>Full Name Of Inventor</b>	<b>Family Name</b> CROWDER	<b>First Given Name</b> PAUL	<b>Second Given Name</b> F.
	<b>Residence &amp; Citizenship</b>	<b>City</b> Santa Barbara	<b>State or Foreign Country</b> California	<b>Country of Citizenship</b> USA
	<b>Post Office Address</b>	<b>Post Office Address</b> 1733 Calle Cerro	<b>City</b> Santa Barbara	<b>State &amp; Zip Code/Country</b> California 93101/USA
<b>Signature of Inventor(1):</b> <i>Paul Crowder</i>			<b>Date:</b> 01/17/02	

**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) it establishes, by itself or in combination with other information, a *prima facie case* of unpatentability of a claim; or
- (2) it refutes, or is inconsistent with, a position the applicant takes in:
  - (i) opposing an argument of unpatentability relied on by the Office, or
  - (ii) asserting an argument of patentability.

A *prima facie case* of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.